



## Board of Adjustment Case Report

City of Raleigh  
Department of City Planning  
One Exchange Plaza  
Raleigh, NC 27601  
(919) 996-2626  
www.raleighnc.gov

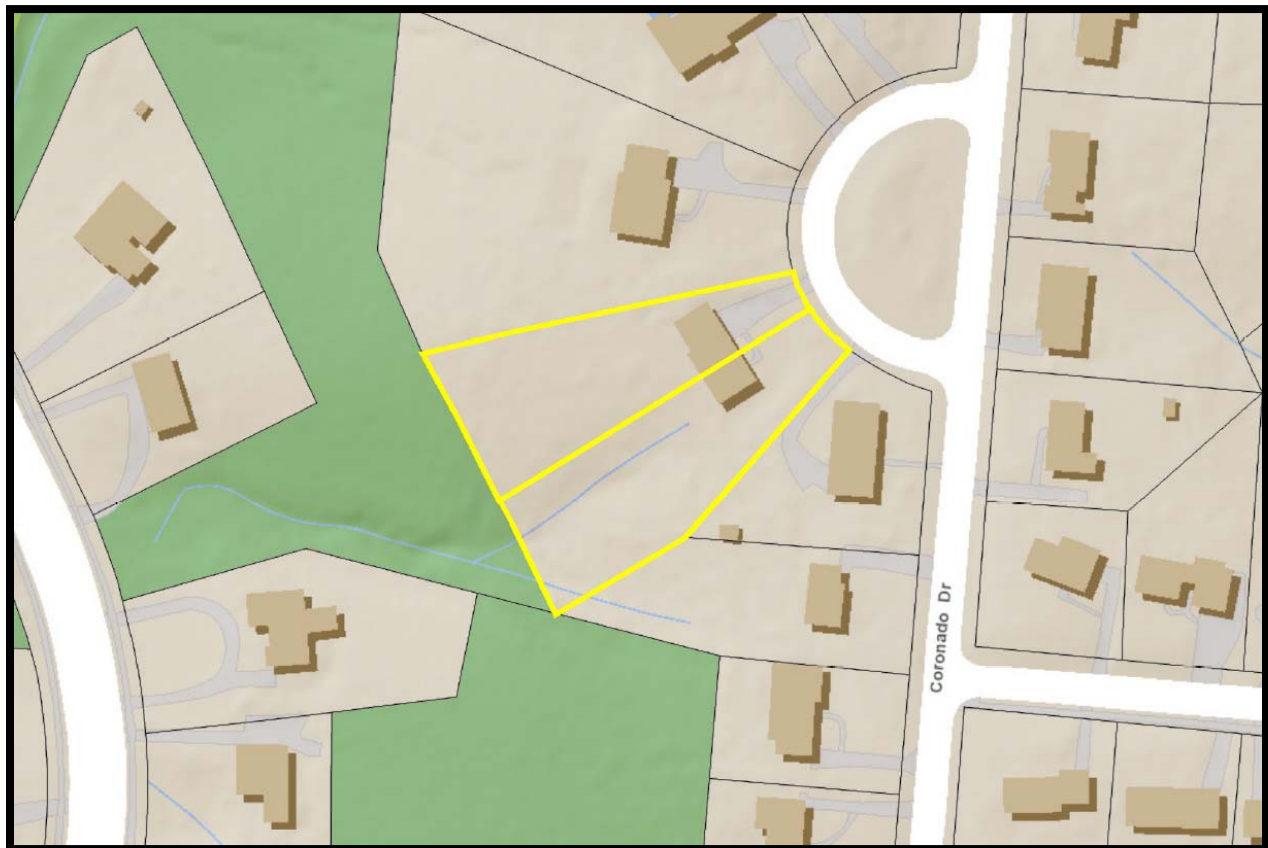
**Case File:** A-27-17

**Property Address:** 5207 and 5211 Coronado Drive

**Appellant:** Joyce G. Parker (adjacent property owner)

**Project Contact:** Joyce G. Parker

**Nature of Case:** An appeal in the nature of a declaratory judgment as to whether or not the properties located at 5207 and 5211 Coronado Drive shown on a recombination map recorded December 17, 2015 were subdivided in compliance with the provisions of the Raleigh Unified Development Ordinance.



**5207 and 5211 Coronado Drive – Location Map**

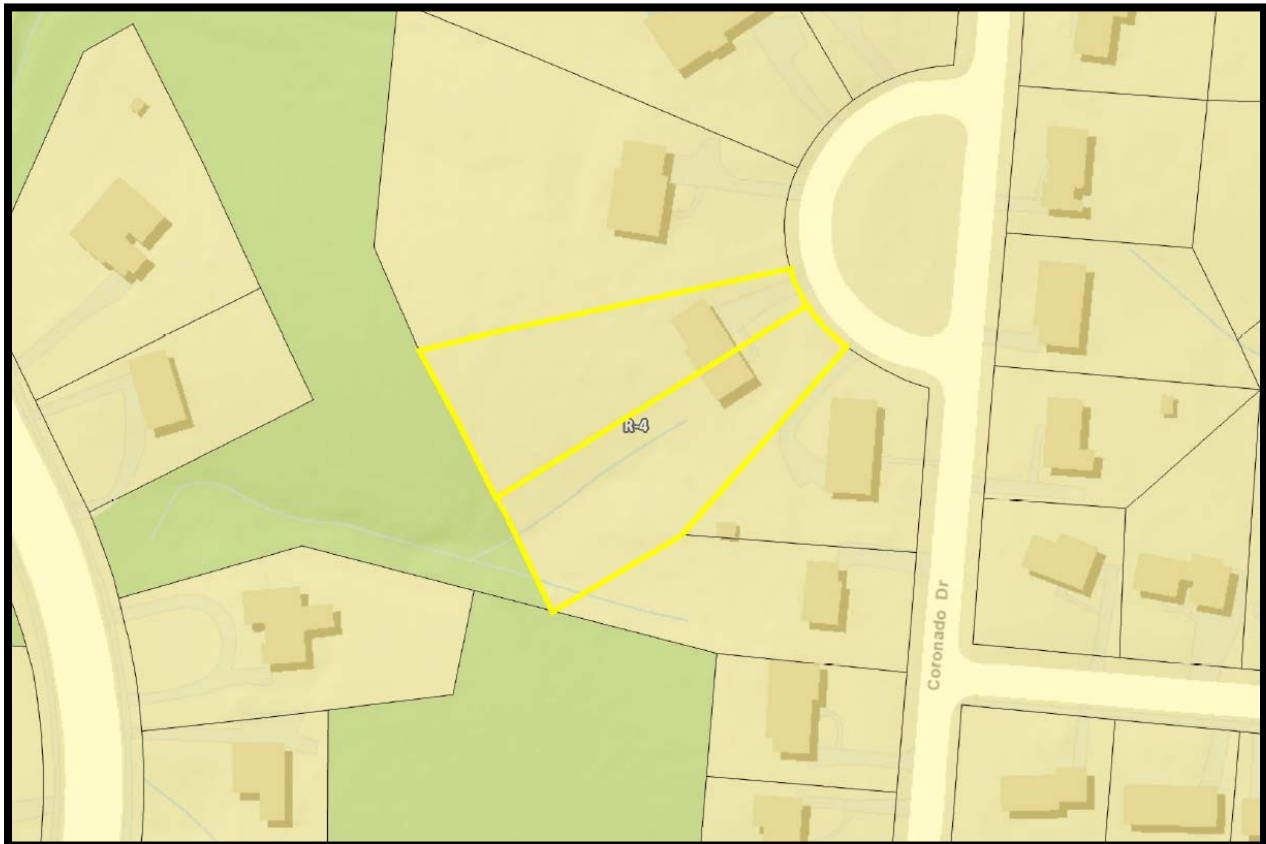
---

**To BOA:** 2-13-17

**Staff Coordinator:** Eric S. Hodge, AICP

---

**ZONING  
DISTRICTS:** Residential-4



## 5207 and 5211 Coronado Drive – Zoning Map

### Section 2.2.1.A. Residential Lot Dimensions (Residential-4)

**Area (min):** 10,000 SF  
(Subject to Sec. 2.1.1.D. density restriction of 4 units per acre (10,890 SF per unit))

**Width – interior lot (min):** 65'

**Width – corner lot (min):** 80'

**Depth (min):** 100'

**Density (max):** 4 u/a

## Article 1.5. Measurement, Exceptions & General Rules of Applicability

### Sec. 1.5.1. Site

#### A. Defined

A site is any lot or group of contiguous lots owned or functionally controlled by the same person or entity, assembled for the purpose of development.

#### B. Site Area

##### 1. Gross

Gross site area is the total area of a site, including proposed streets or other land required for public use that is attributable to the site, as dedicated by the owner or predecessor in title.

##### 2. Net

Net site area is the area included within the rear, side and front lot lines of the site. Does not include existing or proposed public streets or right-of-way.

#### C. Site Width

Site width is the distance between the side lot lines of the site (generally running perpendicular to a street) measured at the primary street property line along a straight line or along the chord of the property line.

#### D. Site Depth

Site depth is the distance between the front and rear property lines of the site measured along a line midway between the side property lines.

### Sec. 1.5.2. Lot

#### A. Defined

A parcel of land either vacant or occupied intended as a unit for the purpose, whether immediate or for the future, of transfer of ownership or possession or for development.

#### B. Lot Area

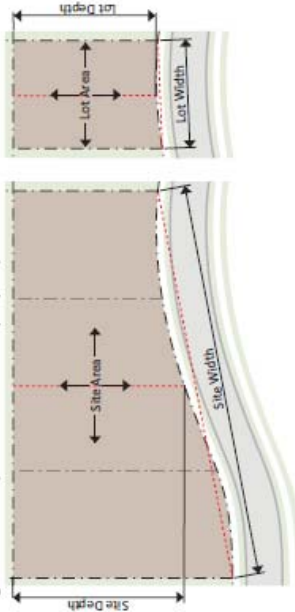
Lot area is the area included within the rear, side and front lot lines. It does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use. District density applies, and may require larger lots than those required for an individual building type.

#### C. Lot Width

Lot width is the distance between the side lot lines (generally running perpendicular to a street) measured at the primary street property line along a straight line or along the chord of the property line. A lot must meet the minimum lot width for the entire minimum required depth of the parcel except for cul-de-sac lots.

#### D. Lot Depth

Lot depth is the distance between the front and rear property lines measured along a line midway between the side property lines.

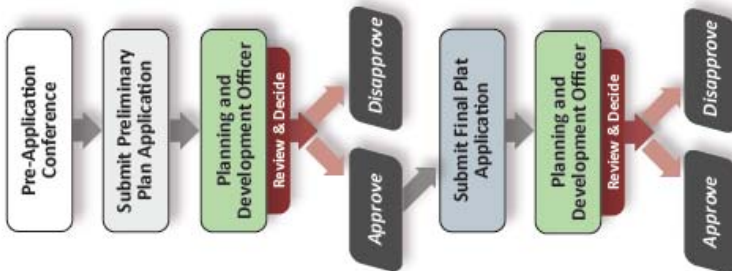


#### E. Lot Width and Depth for Cul-de-Sac Lots

Any lot abutting a cul-de-sac in a Residential District where the minimum lot width is not met at the front property line must comply with the following:

1. The minimum lot frontage on a street shall be 20 feet (this dimension may be reduced upon approval of the Public Works Director if a common driveway or other form of shared access is provided); and
2. The minimum lot depth specified shall not be measured from the front property line, but instead measured beginning from the nearest point to front property line where the lot width equals the minimum lot width for the district. The minimum lot depth measured this way shall be 70 feet in R-1, R-2 and R-4, 60 feet in R-6 and 50 feet in R-10.





**Sec. 10.2.5. Subdivision Review**

**A. Applicability**

Except as expressly exempted below, no land shall be subdivided within the City or within the City's extraterritorial jurisdiction until:

1. A preliminary subdivision plan has been submitted and approved as provided in Sec. 10.2.5.E; and
2. Infrastructure Construction Plans have been submitted and approved; and
3. A final plat has been submitted and approved as provided in Sec. 10.2.5.F; and
4. The approved final plat has been filed and recorded with the local register of deeds office where the property is located.

**B. Exemptions**

The following are exempt and are not subject to subdivision review under this section and the requirements of Chapter 8, Subdivision & Site Plan Standards, unless otherwise provided.

1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the applicable zoning district.
2. The division of land into parcels greater than 10 acres where no right-of-way dedication is involved.
3. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
4. City of Raleigh right-of-way easement acquisition plats.

**C. Limitations on Subdivision Approval**

1. No subdivision of any property shall be approved pending any application for the rezoning of property unless the subdivision is permitted under the existing zoning district of the property and also under the zoning district which is proposed for the property.

2. No subdivision shall be approved on any parcel of a parent tract when general forestry has occurred on the parent tract and the perimeter buffers under Sec. 9.1.10.C. were removed or substantially removed within the last 5 years.

**D. Pre-Application Conference**

Before submitting an application for subdivision approval, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval. This requirement may be waived at the discretion of the Planning and Development Officer.

**E. Preliminary Subdivision Plan Approval Process**

**1. Application Requirements**

- a. An application for preliminary subdivision plan approval shall be submitted in accordance with Sec. 10.2.1.B.
- b. The following forms must be filed out completely in order to process an application for preliminary subdivision plan approval:
  - i. Preliminary Subdivision Plan Application;
  - ii. Design Adjustment Request, if applicable (see Sec. 10.2.18.); and
  - iii. Any Waiver Request.

**2. Waivers**

- a. In order to waive or modify any of the regulations or provisions of Chapter 8, Subdivision & Site Plan Standards not otherwise permitted, the Board of Adjustment must hold a quasi-judicial public hearing as set forth in Sec. 10.2.1.D.1. and give notice as required in Sec. 10.1.8.
- b. Before a waiver or modification request is granted, the Board of Adjustment must find all of the following:
  - i. That topography or other existing physical conditions of the property are such that compliance with the

requirements under this section or *Chapter 8. Subdivision & Site Plan Standards* would cause an unusual and unnecessary hardship or practical difficulties on the developer above and beyond what other developers would meet or deprive the owner of reasonable use of the property;

- ii. That the waiver is in accordance with the stated purposes of this UDO as set forth in Sec. 1.1.4.N. through Sec. 1.1.4.O.;
  - iii. That the practical difficulties or unnecessary hardship were not created by the owner of the property or the applicant;
  - iv. That the practical difficulties or unnecessary hardship are not solely financial;
  - v. That the waiver will not substantially or permanently injure adjacent property or its improvements;
  - vi. The waiver requested is the minimum required to resolve the difficulties described in Sec. 10.2.5.E.2.b.i. above that will make possible the legal use of the land, building or structure; and
  - vii. That the public health, safety and welfare are secured.
- c. Conditions must be reasonably related to the conditions or circumstances that gave rise to the need for a waiver or as an offset to compensate for the granted waiver, conditions may be imposed on any waiver approved by the Board of Adjustment.

### 3. Planning and Development Department Action

- a. Planning and Development has the authority to approve preliminary subdivision plans without review by either the City Council or the Board of Adjustment except in the following situations:
  - i. The preliminary subdivision plan is within a Historic Overlay District or of a designated Historic Landmark;
  - ii. The preliminary subdivision plan is located in a -MPOD, other than single-unit living lots; or
  - iii. A Waiver Request is filed.
- b. After an application has been determined complete, Planning and Development shall give notice of pending review in accordance with Sec. 10.1.8. If subsequent to the filing of a completed application, a waiver

from the Board of Adjustment is requested, Planning and Development shall give notice of the requested waiver in accordance with Sec. 10.1.8.

c. In reviewing the preliminary subdivision plan, Planning and Development shall consult with the Public Utilities, Public Works, Parks and Recreation, Inspections and Fire Departments to check the proposed preliminary subdivision plan against the requirements of the City Code and other applicable technical requirements of the City.

- d. Following review of the preliminary subdivision plan for compliance with the City Code and other applicable technical requirements of the City, Planning and Development shall approve, approve with conditions or deny the preliminary subdivision plan. Planning and Development shall keep written records of any action taken.

### 4. Action Following Planning and Development Department Decision

- a. Following the date of the final action, notice of a decision on an administratively reviewed preliminary subdivision plan shall be provided as set forth in Sec. 10.2.1.C.6.
- b. Within 30 days after the date of the decision on a preliminary subdivision plan, an appeal of Planning and Development's action may be filed with the Board of Adjustment as set forth in Sec. 10.2.11.

### 5. Action Following Preliminary Subdivision Plan Approval

- a. A copy of the preliminary subdivision plan, conforming to all conditions of approval, shall be submitted to Planning and Development, which shall distribute copies to other City departments as necessary.
- b. An application for infrastructure construction plan approval shall be submitted in accordance with Sec. 10.2.1.B. The following forms must be filed out completely in order to process an application for construction drawing approval:
  - i. Infrastructure Construction Plan Application; and
  - ii. A Phasing Plan in accordance with the standards of Sec. 10.2.5.E.7.
- c. No construction of development-related improvements shall commence until all required construction drawing plans, profiles and specifications have been reviewed and approved by the City or other governmental approving agency and all necessary permits issued.



**6. Revisions to an Approved Preliminary Subdivision Plan**

- a. Minor revisions to an approved preliminary subdivision plan that reflect the same basic street and lot configurations as used for the original approval may be approved by the Planning and Development Officer.
- b. Any request for a revision to an approved preliminary subdivision plan that increases the number of building lots, decreases the amount of common open space or alters a road pattern shall be initiated and processed as a new application for preliminary subdivision plan approval.

**7. Phasing**

- a. If not otherwise set out as part of the preliminary subdivision plan, lots may be recorded and public improvements may be constructed in phases.
- b. The Planning and Development Officer shall ensure that the phasing plan is in accordance with the approved preliminary subdivision plan, this UDQ, resolutions of the City Council, and conditions of approval.
- c. The phasing plan shall indicate timing of the construction of public improvements in such a way that the number of lots in each phase is reasonably proportional to the amount of development-related improvements in each phase and that rights-of-way and utility easements are extended in the initial phase of development to all adjacent lots that do not have public street access or access to public utilities.
- d. The number of dwelling units in recorded phases complies with the density requirements of this UDQ.
- e. In the recorded phase, all setbacks, neighborhood transition zones, transitional protective yards and other special yard areas are met.
- f. In the recorded phase, off-street parking requirements for the developed portion are observed.
- g. In the recorded phase, the amount of required open space is proportionate to the percentage of land being recorded.
- h. The recorded phase conforms to all of the requirements for a legal lot.
- i. Unrecorded phases may contain inappropriate densities, setbacks, off-street parking spaces and required open space, provided any such phase

at the time of its recordation is combined with other recorded phases of the development so that the combined properties together conform to the density, setback, off-street parking and open space requirements of this UDQ.

- j. Any residual portion of development complies with the requirements of a legal lot, including its authorization as a subdivided lot and the following:
  - i. Total acres (gross) recorded;
  - ii. Total acres of right-of-way approved;
  - iii. Total acres of right-of-way dedicated;
  - iv. Total acres (net) approved;
  - v. Total acres (net) recorded;
  - vi. Total acres of open space approved; and
  - vii. Total acres of open space recorded.
- k. Amendments to the phasing plan may be made in conjunction with the review of construction plans, but an updated copy of the new phasing plan must be submitted and placed in the case file maintained by the Planning and Development Officer. If the extent of the amendments has an impact on more than one phase, then a revised preliminary plan will be required.

**8. Sunsetting of a Preliminary Subdivision Plan**

- a. Within 3 years after approval of the preliminary subdivision plan, at least ½ of the gross land area shown on the preliminary subdivision plan must have a final subdivision plat recorded in the local register of deeds office where the property is located and all remaining portions of the preliminary subdivision plan shall have the final subdivision plat recorded in the local register of deeds office where the property is located within five years from the approval date of the preliminary subdivision plan.
- b. Failure to record final subdivision plats for an approved preliminary subdivision plan within the required time constraints shall automatically void the unrecorded portions of the preliminary subdivision plan unless the Planning and Development Officer finds that all of the following are met:

CHAPTER 10. ADMINISTRATION | Article 10.2. Review Procedures  
Sec. 10.2.5. Subdivision Review

- i. A written request for an extension has been made to the Planning and Development Officer prior to the expiration period;
  - ii. Unrecorded portions of the preliminary subdivision plan shall conform to all ordinances, laws and City Council resolutions in effect at the time of the requested extension;
  - iii. The preliminary subdivision plan considers and respects the practical limits of public facilities and services such as stormwater, water and sewer lines, streets, fire, public safety and trash collection;
  - iv. The applicant has provided the most recent City of Raleigh inspection report from the Public Works Department demonstrating that the site is currently in compliance and that any previously graded or cleared portion of the site which is not currently under construction is currently and appropriately stabilized to prevent erosion and sediment erosion control problems during the requested extension period; and
  - v. No other extension has been granted.
- c. If all the requirements of Sec. 10.2.5.E.b. above are met, the Planning and Development Officer shall permit only one 3-year extension calculated from the date the request for extension is approved by the Planning and Development Officer.
- F. Final Subdivision Plat Approval Process**
- 1. Applicability**
    - a. All divisions of land not exempted in Sec. 10.2.5.B. shall require final subdivision plat approval as set forth below.
    - b. The final subdivision plat shall constitute one or more phases of the approved preliminary subdivision plan.
    - c. Approval of the final subdivision plat shall be subject to the installation, acceptance, warranty and as-built drawing of the improvements required in Chapter 8. Subdivision & Site Plan Standards or the posting of a construction surety as set forth in Sec. 8.1.3.
  - 2. Submittal Requirements**
    - a. An application for final subdivision plat approval shall be submitted in accordance with Sec. 10.2.1.B.
- b. The following forms must be filled out completely in order to process an application for final subdivision plat approval:
    - i. Recorded Map Application; and
    - ii. Recorded Map Checklist.
  - c. The final plat submission shall contain all of the following.
    - i. The inclusion of all required items as provided in the Recorded Map Application, Recorded Map Checklist and any other checklist contained within the final subdivision plat application forms.
    - ii. Compliance with all requirements of N.C. Gen. Stat. §47-30.
    - iii. A metes and bounds description of all required easements.
    - iv. Executed copies of all legal instruments required by the City in association with development approval.
    - v. Posting of a construction surety as set forth in Sec. 8.1.3. for improvements which are not accepted for public maintenance by the City.
    - vi. Tree conservation plats for approved preliminary subdivisions 2 or more acres in size.
    - vii. The final plat and all dedication plats shall contain a ownership certification that certifies and warrants that the undersigned is (are) the sole owner(s) of the property shown on the map or plat and any accompanying sheets having acquired the property in fee simple by deed(s) recorded in the county register of deeds office where the property is located and as such has (have) the right to convey the property in fee simple and that the dedicant(s) hereby agree to warrant and defend the title against any claims of all persons whomsoever excepted as specifically listed herein and that by recording this plat or map 1( we) do irrevocably dedicate to the City of Raleigh for public use all streets, easements, rights-of-way, parks and greenways (as those interests are defined in the City Code) and as the same are shown on the plat for all lawful purposes to which the City may devote or allow the same to use and upon acceptance thereof, in accordance with all City policies, ordinances, regulations or conditions of the City of Raleigh, for the benefit of the public, provided any dedication of easements for storm drainage not specifically labeled City of Raleigh or public are not made to the City

Part 10A: Unified Development Ordinance  
City of Raleigh, North Carolina

10 - 28  
Effective Date: September 01, 2013

Supp. No. 2



- of Raleigh, but are irrevocably made to the subsequent owners of any and all properties shown hereon for their use and benefit.
- viii. Delineations of watercourse buffers and impervious surface area limitations for properties located in a -UWPOD, -FWPOD, -SWPOD, -MPOD or CM District.
- ix. Signature of an official from the North Carolina Department of Transportation if public street right-of-way is involved for lands located outside the City limits.
- x. Stormwater control facilities, including without limitation, detention facilities, retention facilities, wet ponds, sand filters, wetlands, bio-retention measures, swales and storm pipes required by Article 9.2. *Stormwater Management*, permanently protected undisturbed open space areas, together with showing the means of transporting stormwater runoff to and from any nitrogen reduction and stormwater runoff control measures or facilities.
- xi. A statement on the plat which lots, by number, are served by which stormwater control facility; the stormwater control facility shall be indicated by type and by its general location.
- xii. A notation that the dedicators and their successors waive their statutory rights to withdraw dedications of the right-of-way when the public has made reimbursement for the right-of-way or when density has been transferred from the right-of-way.
- d. The applicant shall submit all information, maps and data required by the Planning and Development Officer to properly review the final subdivision plat for conformity with all City ordinances, standards and regulations. For example, building envelopes may be required to show the development potential of any lot and if the lot can not be reasonably developed in accordance with Article 8.3. *Blocks, Lots, Access*, the lot shall not be recorded notwithstanding any prior preliminary subdivision plan approval of the lot.
- 3. Planning and Development Officer Action**
- a. After an application has been determined complete, Planning and Development shall review the final subdivision plat for compliance with the approved preliminary subdivision plan and conditions of approval.
- b. In reviewing the final subdivision plat, Planning and Development shall consult with the Public Utilities, Public Works, Parks and Recreation and Fire Departments.
- c. Upon completion of the review, the Planning and Development Officer may meet with the applicant to discuss any changes in development design.
- d. If the final subdivision plat contains the dedication of streets and public easements, the construction of development-related improvements or the establishment of private drainage easements, then Planning and Development shall forward copies of the final subdivision plat to the appropriate City departments for review.
- e. Planning and Development shall complete the review of the final subdivision plat and notify the applicant of nonconformities, omissions or required corrections. If the final subdivision plat is disapproved, the reasons for such disapproval shall be stated in writing, specifying the provisions of the UDO with which the final subdivision plat does not comply. A revised final subdivision plat may be submitted to Planning and Development for further consideration.
- f. Within 20 days after the date of the decision on a final subdivision plat, an appeal of the Planning and Development Officer's action may be filed with the Board of Adjustment as set forth in Sec. 10.2.11.
- g. Planning and Development shall approve the final subdivision plat if it conforms with the approved preliminary subdivision plan and conditions of approval, N.C. Gen.Stat. §30-47 and the content requirements for the plat and recorded map checklist.
- h. No final subdivision plat shall be approved until all required public improvements are accepted for public maintenance and completely installed or a construction security is posted with the City as set forth in Sec. 8.1.3.
- 4. Action Following Final Approval of the Plat**
- a. After a final subdivision plat is approved, the Planning and Development Officer shall certify the plat for recording after the required signatures for recordation have been provided.

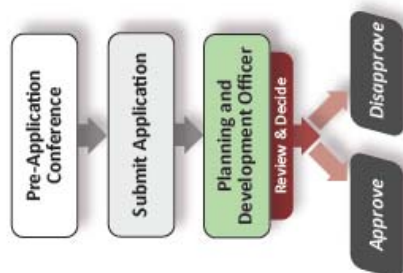


- b. The City may, as a precondition for recording lots, require the recording of legal instruments.
- c. The subdivider shall present to the county register of deeds office where the property is located 3 signed copies of the final plat, 1 copy for the register of deeds, a copy for the subdivider and a copy for the City.
- d. Plats presented to and approved for recordation by the City must be recorded on or before the 14th day following the certification of the Planning and Development Officer. The expiration date shall be clearly indicated on the plat. By the end of the next business day following the recordation of the final plat, the subdivider shall provide to Planning and Development evidence of a recorded copy of the certified final plat and the recordation of all legal instruments required by the City in association with development approval.

**5. Revisions to an Approved and Signed Final Subdivision Plat Not Yet Recorded**

Following certification of the Planning and Development Officer, in accordance with Sec. 10.2.5.F.4., no final plat shall be revised, except with the consent of Planning and Development:

- a. When revisions are proposed to an approved final subdivision plat, the applicant shall submit a written request to Planning and Development delineating the revisions and requesting authorization for the revisions.
- b. Revisions to an approved final subdivision plat may only be approved if still in conformance with the approved preliminary plan.
- c. Changes to an approved final subdivision plat not in conformance with the approved preliminary plan must be resubmitted as a new preliminary plan application.
- d. In addition to the written request for revising the final plat and the submittal of a revised final subdivision plat, in all instances the applicant shall submit the required fees to Planning and Development for processing and recording the revised final plat.



## Sec. 10.2.6. Non-Subdivision Final Plat and Recorded Instruments

### A. Applicability

The provisions of this section apply to the following:

1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots conform with, or exceed, the standards of Sec. 8.3.3., but if the standards of Sec. 8.3.3. are not met, the recombination may still be approved if the recombined lots more closely conform to the minimum standards of Sec. 8.3.3. than do the existing conditions.
2. The division of land into parcels greater than 10 acres where no right-of-way dedication is involved.
3. The public acquisition by purchase or dedication of strips of land for the widening or opening of streets or for public transportation system corridors.
4. City of Raleigh right-of-way or easement acquisition plats.
5. All other plats or maps, other than subdivision plats, where the existing property boundaries or street rights-of-way are changed or new street rights-of-way are created.
6. All other maps or plats, other than subdivision plats, that are required by State Law to contain a City certification.
7. Except as expressly exempted below, no map or plat shall be filed and recorded with the local register of deeds office for lands within the City or within the City's extrajurisdictional jurisdiction unless and until it has been submitted and approved as provided in this section.

### B. Exemptions

The following are exempt and are not subject to this section and to the requirements of Chapter 8. *Subdivision & Site Plan Standards* unless otherwise provided.

1. A survey of an existing parcel or parcels of land that does not

- create a new street or change an existing street or property boundary.
2. A survey of an existing building or other structure or natural feature, such as a watercourse.
3. A control survey.
4. North Carolina Department of Transportation rights-of-way plans or roadway corridor official maps.
5. Easement plats prepared by utility companies granted the power of eminent domain by N.C. Gen. Stat. §40A-3(a)(1).
6. A map attached to a deed or other instrument submitted for recording in a form for illustrative purposes only that meets the requirements of N.C. Gen. Stat. §47-30(n) and does not convey fee simple property in violation of this UDO.

### C. Pre-Application Conference

Before submitting an application for any division of land greater than 10 acres where no right-of-way dedication is involved, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the consequences for development of a tract without a road network. This requirement may be waived at the discretion of the Planning and Development Officer.

### D. Requirements for Recombinations

#### 1. Recombination by Recorded Maps

The requirements for recombination by recorded map include all of the following:

- a. The resultant lots conform with, or exceed, the standards of Sec. 8.3.3., but if the standards are not met, the recombination may still be approved if the recombined lots more closely conform to the minimum standards of Sec. 8.3.3. than do the existing conditions;
- b. The total number of lots is not increased;
- c. The title block contains the word "Recombination";



- d. Structures on the affected lots are shown and the requested recombination does not violate the setback requirements of this UDO and the North Carolina Building Code;
  - e. The amount of impervious surface per lot is indicated before and after the recombination. All impervious surfaces and lot areas within a -UWPOD, -FWPOD, -SWPOD, -MPOD or CM District shall be calculated from the adjoining street right-of-way; provided if an expansion of an existing right-of-way or new right-of-way has been established in the Comprehensive Plan, impervious surface and lot areas within the overlay district shall be calculated from the expanded or new right-of-way;
  - f. The recombination plat is certified by the Planning and Development Officer and contains the appropriate authorization number to ensure the proper mapping of the resultant lots on the applicable county and City Geographic Information Systems;
  - g. The recombination indicates that all resultant lots have the same water and sewer utility access that existed prior to the recombination;
  - h. The recombination is certified by the county health department where the property is located that the recombination will not create a violation of setback standards or other standards of the county health department regarding private wells and septic systems;
  - i. The recombination does not create the potential of new access points on a Major Street, Mixed Use Street or Thoroughfare in violation of the of the UDO and the Raleigh Street Design Handbook or render any existing driveway access point nonconforming;
  - j. The recombination plat conforms to all laws and ordinances for the recordation of maps and includes all information listed in the Recorded Map Checklist form except for information that is uniquely necessary for subdivision plats;
  - k. The resultant lots, if located within floodway fringe areas as set forth in Article 9.3. *Floodprone Area Regulations*, conform to the lot coverage limitations of Sec. 9.3.5.C.; and
  - l. The recombination plat will be processed in accordance with this section.
- 2. Recombination by Recorded Instrument**  
 The requirements for recombination by recorded instrument include all of the following:
    - a. The resultant lots conform with, or exceed, the standards of Sec. 8.3.3, but if the standards of Sec. 8.3.3 are not met, the recombination may still be approved if the recombined lots more closely conform to the minimum standards of Sec. 8.3.3 than do the existing conditions;
    - b. The total number of lots is not increased;
    - c. The instrument contains a metes and bounds description of the new recombined lots or reference is made to a recorded plat;
    - d. The instrument contains a statement as to the total acreage of the affected lots;
    - e. The title of the instrument contains the word "Recombination";
    - f. The instrument contains a certification that the recombination does not violate the setback requirements of this UDO and the North Carolina Building Code;
    - g. The amount of impervious surface per lot is indicated before and after the recombination. All impervious surfaces and lot areas within a -UWPOD, -FWPOD, -SWPOD, -MPOD or CM District shall be calculated from the adjoining street right-of-way; provided if an expansion of an existing right-of-way or new right-of-way has been established in the Comprehensive Plan, impervious surface and lot areas within the overlay district shall be calculated from the expanded or new right-of-way;
    - h. The recombination instrument is signed by all property owners;
    - i. If the number of lots is reduced, the instrument is to indicate which lots are eliminated;
    - j. The recombination instrument is certified by the Planning and Development Officer and the appropriate authorization number is attached to ensure the proper mapping of the resultant lots on the applicable county and City Geographic Information Systems;
    - k. The instrument indicates that all resultant lots have the same water and sewer utility access that existed prior to the recombination;
    - l. The instrument contains a certification by the county health department where the property is located that the recombination will not create a

- violation of setback standards or other standards of the county health department regarding private wells and septic systems;
- m. The recombination does not create the potential of new access points on a Major Street, Mixed Use Street or Thoroughfare in violation of the of the UDO and the Raleigh Street Design Manual or render any existing driveway access point nonconforming;
- n. The resultant lots, if located within floodway fringe areas as set forth in *Article 9.3. Floodprone Area Regulations*, conform to the lot coverage limitations of *Sec. 9.3.5.C.*; and
- o. The recombination instrument will be processed in accordance with this section.

### 3. Limitations on Recombination Approval

No recombination of any property shall be approved pending any application for the rezoning of property unless the recombination is permitted under the existing zoning district of the property and also under the zoning district which is proposed for the property.

## E. Non-subdivision Maps, Plats and Instruments of Recombination Approval Process

### 1. Application Requirements

- a. An application for approval of a non-subdivision final map, plat or recombination instrument shall be submitted in accordance with *Sec. 10.2.1.B.*
- b. The following forms and documents must be completed in order to process an application for non-subdivision final map, plat or recombination instrument recordation approval:
  - i. A Recorded Map Application (recorded plat only);
  - ii. One or more deeds of conveyance, when a recombination changes the boundaries of properties owned by different persons (recorded plat and recombination instrument); and
  - iii. A preliminary plat or an instrument of recombination (recorded plat and recombination instrument).

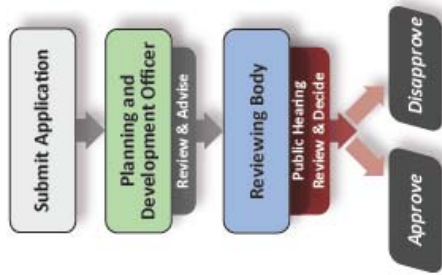
### 2. Planning and Development Officer Action

- a. After an application has been determined to be complete, Planning and Development shall review the proposed application for compliance with this UDO and the requirements of N.C. Gen. Stat. §47-30.
- b. Upon completion of the review of the initial non-subdivision map, plat or recombination instrument, Planning and Development either shall approve or approve with conditions or reject the application depending on whether it conforms to the applicable UDO provisions and the requirements of N.C. Gen. Stat. §47-30.
- c. An appeal of Planning and Development's decision may be filed with the Board of Adjustment as set forth in *Sec. 10.2.11.*

### 3. Action Following Approval

- a. After a non-subdivision final map, plat or recombination instrument is approved, the Planning and Development Officer shall certify the final map, plat or recombination instrument as exempt from the subdivision regulations of the UDO.
- b. The City may, as a precondition for recording non-subdivision maps, plats and recombination instruments, require the recording of legal instruments.
- c. Non-subdivision plats and recombination instruments presented to and approved for recordation by the City must be recorded on or before the 34th day following the signature of the Planning and Development Officer. The expiration date shall be clearly indicated on the recording plat and on the recombination instrument.
- d. By the end of the next business day following the recordation of the non-subdivision final plat or recombination instrument, the applicant shall provide to Planning and Development evidence of a recorded copy of the recombination instrument or certified final plat and the recordation of all legal instruments required by the City in association with the approval.





**Sec. 10.2.11. Appeal of an Administrative Decision**

**A. Applicability**

Any aggrieved person or any agency, officer, department, board or commission of the City, including the City Council, affected by any decision, order, requirement or determination relating to the interpretation, compliance or application of this UDO as made by an administrative official charged with the administration and enforcement of these provisions of the UDO may file an appeal in accordance with the requirements of this section.

**B. Reviewing Body**

Appeals of an administrative decision are heard by the Board of Adjustment except for Minor Work Certificates of Appropriateness, which are heard by the Raleigh Historic Development Commission.

**C. Stay of Proceedings**

1. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken (in most instances, this will be the Zoning Enforcement Administrator) certifies that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this UDO. In that case, proceedings shall not be stayed except by a restraining order granted by of the reviewing body or a court, issued on application of the party seeking the stay, for due cause shown, with copy of notice to the officer from whom the appeal is taken.
2. An appeal shall not stop action lawfully approved; only actions claimed to be in violation of this UDO shall be stayed.

**D. Filing Requirements**

1. An appeal of any administrative decision shall be made by filing a written notice of appeal specifying the grounds for the appeal with the officer from whom the appeal is taken

and the reviewing body. Notice of appeal provided to the City Clerk is considered to be notice to the reviewing body.

2. Except when a different time period is established in this UDO, the notice of appeal shall be filed by persons who received either mailed notice or notice of decision pursuant to Sec. 10.2.1.C. within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal of any plot plan or site plan shall be filed within 30 days after the receipt from the earlier of any source of actual or constructive notice of the decision within which to file an appeal.

3. A notice of appeal of an administrative decision shall be considered made, when the notice of appeal is provided to the City Clerk and the officer from whom the appeal is taken. The date and time of filing shall be entered on the notice of appeal.

4. In addition to the notice of appeal, within 30 business days from the date of the notice of appeal, an application for an appeal of administrative decision shall be submitted to Planning and Development in accordance with Sec. 10.2.1.B.

**E. Approval Process**

**1. Planning and Development Officer Action**

- a. After notice of appeal is provided, the officer from whom the appeal is taken shall transmit to the reviewing body all the papers constituting the record upon which the action appealed from was taken.
- b. Planning and Development shall review the application for an appeal of an administrative decision in accordance with all applicable requirements of this UDO and advise the applicant.
- c. Planning and Development shall provide the notices required in Sec. 10.1.7. and Sec. 10.2.1.C.

**2. Reviewing Body Action**

Within 60 days after a completed application of an appeal of an administrative decision is filed, the reviewing body shall hold a quasi-judicial public hearing as set forth in Sec. 10.2.1.D.1. and provide notice as required in Sec. 10.2.1.C.6. Appeals filed to the City Manager shall not be heard at a quasi-judicial public hearing.

**F. Showings**

The showings for the reviewing body shall be those required for the original decision. The reviewing body may affirm or reverse the officer from whom the appeal is taken based on the applicable standards of this UDO.



# Appeal of Administrative Decision Application



**RALEIGH**  
DEPARTMENT OF  
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

<b>Nature of appeal (If more space is needed, submit addendum on separate sheet):</b> This is an appeal in the nature of a declaratory judgment: the property located at 5207 and 5211 Coronado Drive has not been subdivided in compliance with the provisions of the Raleigh UDO. See attached Addendum.		<b>OFFICE USE ONLY</b>  Transaction Number <b>RECEIVED</b> CITY CLERK'S OFFICE 12/22/16  A-27-17
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.		
R-164-15		

GENERAL INFORMATION		
Property Address <b>5207 &amp; 5211 Coronado</b>	Date <b>December 13, 2016</b>	
Property PIN <b>0073821 &amp; 0434572</b>	Current Zoning <b>R-4</b>	
Nearest Intersection <b>Coronado Drive &amp; Gunnison Drive</b>	Property size (in acres) <b>1.09</b>	
Property Owner Information		
Property Owner <b>Mangrum Building, LLC</b>	Phone <b>919-868-3114</b>	Fax
Owner's Mailing Address <b>412 E. Williams Street, Suite A, Apex, NC 27502</b>	Email <b>radams.mangrumbuilding@gmail.com</b>	
Contact Person Information		
Project Contact Person <b>Joyce G. Parker, Trustee of the Joyce G. Parker Trust</b>	Phone <b>919-815-0047</b>	Fax
Contact's Mailing Address <b>5205 Coronado Drive, Raleigh, NC 27609</b>	Email	
Property Owner Signature <i>Joyce G. Parker</i>	Email	
Notary  Sworn and subscribed before me this <u>14th</u> day of <u>December</u> , 20 <u>16</u>	Notary Signature and Seal <i>Tara M. Corn</i> 	



*City of Raleigh*  
*North Carolina*

28 November 2016

Joyce Parker  
5025 Coronado Drive  
Raleigh, North Carolina 27609

**RE: Code Interpretation Request/5207 and 5211 Coronado Drive**

Dear Ms. Parker:

I am in receipt of your request for an official code interpretation dated November 21, 2016. The addendum included with the request (titled "Addendum to Subdivision Appeal Application") identified three contentions related to the properties located at 5207 and 5211 Coronado Drive. These contentions are substantially similar to those raised in a letter dated May 5, 2016, by attorney Andrew J. Petesch.

These properties were the subject of a recombination map that was recorded on December 17, 2015 with the Wake County Register of Deeds. The UDO provides a process by which an applicant may request an official zoning code interpretation as stated in section 10.2.14 of the Unified Development Ordinance. However, once a final administrative decision is made, no matter is left for interpretation and the appropriate method to challenge the decision is through an appeal of an administrative decision to the Board of Adjustment, as stated in section 10.2.11 of the Unified Development Ordinance, within the 30 day appeal period provided in the UDO. The appeal period established in the UDO is incorporated from N.C. Gen. Stat. § 160A-388.

A final decision was previously made in this matter by an administrative official and no appeal was taken. Therefore, nothing remains for interpretation concerning the December 17, 2015 recombination map.

Please feel free to contact me with any questions.

Sincerely,

Travis R. Crane  
Assistant Planning Director



# Code Interpretation Request Form



**DEVELOPMENT  
SERVICES  
DEPARTMENT**

Development Services Customer Service Center | 1 Exchange Plaza, Suite 400 | Raleigh, NC 27601 | 919-996-2495 | efax 919-996-1825

Project Name (If associated with a project): 5207 & 5211 Coronado Drive		
Applicant Name: Joyce Parker		Date: November 21, 2016
Applicant Street Address: 5205 Coronado		
City: Raleigh	State: NC	Zip: 27609
Applicant E-mail:		Applicant Phone Number:
<b>Description of Request with City/State Code Section reference:</b>  This is a request in the nature of a declaratory judgment that the property located at 5207 and 5211 Coronado Drive has not been subdivided in compliance with the provisions of the Raleigh UDO. See attached Addendum.		
<b>Departmental Staff Representative responsible for requested interpretation:</b>		
Fire - Steve Berry	Public Utilities - Cesar Sanchez	
Development Services, Building Code - Leon Skinner	UDO - Travis Crane	

**Submit applications to:**

Christine Darges, Development Management Team  
christine.darges@raleighnc.gov  
One Exchange Plaza, Suite 304  
Raleigh, NC 27601

## **ADDENDUM TO SUBDIVISION APPEAL APPLICATION**

Petitioner is the owner of the property located at 5205 Coronado Drive (Wake County Real Estate ID 0052938), the adjacent parcel subject to this petition. Petitioner seeks an interpretation of the Raleigh UDO based on the grounds that as an adjacent property owner, any subdivision of the subject property would require written notice to Petitioner. Raleigh UDO §10.2.5.E.3.

The subject property located at 5207 and 5211 Coronado Drive (the "Property") has not been subdivided in compliance with the provisions of the City of Raleigh Unified Development Ordinance (the "UDO"). Petitioner respectfully files this application seeking a written determination from the City of Raleigh that (i) Lot 23 and 23-A are one lot, (ii) the lot has not been subdivided in accordance with the standards of the Raleigh UDO, and (iii) that a recombination cannot create additional lots; and respectfully requests that the City enjoin further development and/or the sale of the Property as two lots.

### **I. The Property Is One Parcel**

The original Lot 23, Block H, North Hills Estates subdivision, was created in 1961, as shown in Book of Maps 1961, Page 10, Wake County Registry (See Exhibit A). In 1978, additional acreage was added to Lot 23 (as well as to Lots 21, 24, and 25 of Block H, North Hills Estates Subdivision), as shown on the plat entitled "A Revision In Block H North Hills Estates, Raleigh, NC" recorded in Book of Maps 1978, Page 508, Wake County Registry (See Exhibit B). The 1978 plat clearly states "This is not a subdivision but a recombination of previously platted property." The plat shows Lots 21, 23, 24 and 25 recombined with the common space of Block H, reducing the size of the common space, and increasing the size of Lots 21, 23, 24 and 25, respectively, as indicated by the arrows extending from the additional acreage to each lot. The additional acreage created on the 1978 plat could not have been additional subdivided lots because they would have been non-conforming lots as they did not front on any street; furthermore, the plat was not approved as a subdivision plat as the plat clearly states. Therefore, the portion of the property recombined into Lot 23 (designated at 23-A) was not, and never has been, a separate lot for sale or development.

As further evidence that the 1978 plat did not create separate lots for sale or development, a map recorded in Book of Maps 1988, Page 533 (See Exhibit C), for purposes of making a greenway dedication shows only one parcel – Lot 23, and *no* 23-A. The 1978 recombination plat is specifically listed as a reference in preparing the 1988 plat. Conversely, a subdivision plat recorded in Book of Maps 1979, Page 233 (See Exhibit D), which is also specifically listed as a reference in preparing the 1988 plat and created new lots 49-A and 59-A, did not include arrows between the new lots and the originals, and did not include the statement "This is not a subdivision..." that was shown on the 1978 plat. Thus, on the 1988 plat the new Lots 49-A and 59-A are shown as separate lots, while the 1978 additional acreage is shown recombined as Lots 21, 23, 24 and 25, each only one lot.

These facts, which establish that Lot 23 and 23-A are one, single parcel, were brought to the attention of the City of Raleigh by Petitioner's letter dated May 5, 2016 (See Exhibit G, hereinafter "Petitioner's Letter"). Subsequently, the City of Raleigh has acknowledged that the lots shown on the 1978 recombination plat are each one legal parcel (See Exhibit E, Letter from City of Raleigh to Property

Owner of 5201 Coronado Drive, hereinafter the "City Letter"). However, while referencing Petitioner's Letter, the City Letter does not directly address the issues raised by Petitioner's Letter regarding Lot 23 and 23-A specifically. In fact, the City Letter was not even addressed or mailed to Petitioner (a copy was only provided to Petitioner after several in person requests to the City), and conspicuously does not mention Lot 23 and 23-A. Nonetheless, the City Letter states in reference to Lot 21 and 21-A that in order for an owner to create an additional lot, "a preliminary subdivision plan approval meeting all standards of the Unified Development Ordinance will be required." To date, no response has ever been provided to Petitioner Letter addressing Lot 23.

## II. The Property Has Not Been Subdivided.

The Wake County records cited above and the City Letter establish conclusively that the effect of the approved and recorded 1978 Recombination Plat was to recombine a certain area of the open space (Lot 23-A) with the existing Lot 23, which resulted in a single, larger Lot 23. North Carolina General Statutes Section 160A-376 defines "subdivision" as "all divisions of a tract or parcel of land into *two or more lots*, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development" (emphasis added). N.C.G.S. §160A-376(a). Furthermore, the City has acknowledge and determined with respect to lots depicted on the 1978 plat that in order for an owner to create an additional lot, "a preliminary subdivision plan approval meeting all standards of the Unified Development Ordinance will be required." (See City Letter). Under the Raleigh UDO, no land shall be subdivided until:

1. a preliminary *subdivision* plan has been submitted and approved as provided in Section 10.2.5.E; and
2. Infrastructure Construction Plans have been submitted and approved; and
3. A final plat has been submitted and approved as provided in Sec. 10.2.5.F.; and
4. The approved final plat has been filed and recorded with the local register of deeds office where the property is located.

No subdivision plan for the Property has been approved in accordance with the above-listed provisions of the UDO. The plat which has been recorded in Book of Maps 2015, Page 2106 (See Exhibit F), was not a *subdivision* plat, nor was the 1978 plat. Because neither the 1978 plat nor the 2015 plat were *subdivision* plats, Lot 23 and 23-A have not been subdivided for separate sale or building development. Lot 23 and 23-A are one parcel, have been owned and sold as one parcel since 1978, and will remain one parcel until properly subdivided.

Furthermore, under the subdivision provisions of the Raleigh UDO, the City is required to provide notice of pending subdivision review for completed applications. Raleigh UDO §10.2.5.E.3. Petitioner was repeatedly assured by City Planning Department officials that they would receive notice of any subdivision review. No such application has been made, no notice has been provided to the parties entitled to such notice, and no *subdivision approval* has ever been granted for the subject Property.

Petitioner respectfully requests that the City issue a written determination that no proper subdivision of Lot 23 and 23-A has been applied for, none has been approved, and therefore the Property cannot be sold or developed as two lots where there is only one.



### III. Recombination Cannot Create Additional Lots

Until the Property is subdivided, only one lot exists. Under the UDO, a "combination or recombination of portions of *previously subdivided* and recorded lots where the total number of lots is *not increased*" is exempt from the subdivision review provisions outlined above. Raleigh UDO §10.2.5.B. However, this exemption is inapplicable to the case at hand because, as stated above, Lot 23 and 23-A are one lot and have not been *previously subdivided*. Additionally, the recombination exemption is inapplicable because the total number of lots may not increase. If the 1978 plat and the 2015 plat are each recombination plats, then Lot 23 and 23-A are still one lot and cannot increase to two under the recombination exemption.

The 2015 plat was submitted by the owner under the incorrect premise that it was a recombination of 23 and 23-A. However, as explained above, the 1978 plat was *not* a subdivision plat and therefore Lot 23 and 23-A are one lot. Therefore, the 2015 plat cannot be a recombination plat as among Lot 23 and 23-A, i.e. you cannot recombine one lot, and it is in fact a *subdivision plat* which was not properly submitted as such. There is no authority for the City to approve the subdivision a lot without complying with the provisions of the Raleigh UDO, and there is no authority for the City to otherwise approve a subdivision as a recombination when there is only one lot. A recombination plat cannot increase the "total number of lots". Raleigh UDO §10.2.6.A.1. The only way to create two lots for sale or building development would be to apply for a subdivision of the parcel in compliance with the Raleigh UDO. In this case, no subdivision application has been submitted. However, the 2015, plat as recorded, created an additional lot, and therefore was not a recombination, which is in violation of the subdivision provisions of the Raleigh UDO.

If, for the sake of argument, the 2015 plat is a valid recombination, then there is still only one lot for sale and development because a "recombination" cannot create two lots from one. Now, instead of one lot being described by two pieces of property adjoining on a north/south orientation, there is *one* lot described by two pieces adjoining on an east/west orientation. Nonetheless, the 2015 plat did not and cannot create two lots from one if it was merely a recombination plat.

As an example: If a driver went to DMV with a pickup truck with an attached trailer and applied for separate tags for each, the driver would be able to get separate tags for the pickup and the trailer. However, if a driver went to DMV with a pickup truck with a modified and extended truck bed and applied for separate tags for the cab and the bed, the driver could not get a separate tag for the truck bed because there is only one vehicle. In order to get two tags, the driver would likely have to go through a lengthy process to have the cab separated from the truck bed, making sure that each were roadworthy in the process, and could then receive two tags once the pickup was split. The same would be true no matter if the driver tried to split the pickup cab from bed, or length-wise down the middle.

In our case, the driver owns a pickup truck with an extended truck bed, and has applied as if he owns a pickup truck and trailer. Approving the truck bed for separate tags would not suffice to create a separate vehicle. Likewise, a recombination plat where there is only one lot does not and cannot create a separate lot for sale or building development. Characterizing Lot 23 and 23-A (as shown on BM1978, Page 508) as Lot 23 and 2300 (BM2015, Page 2106) does not and cannot create a separate lot for sale or building development without adherence to the Raleigh UDO provisions for subdividing a lot.

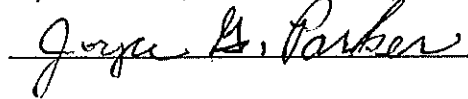
A "recombination" cannot create two lots from one, and any approvals based on the existence of two lots are in error and should be revoked. North Carolina law is clear that a property owner cannot establish a vested right to develop properties for which a permit or approval was issued in error or by mistake. See Wilson v. City of Mebane, 710 S.E.2d 403 (2011) (staff mistakenly applied provision of old ordinance); Mecklenburg County v. Westbery, 32 NC App. 630, 233 S.E.2d 658 (1977) (permit revoked after County discovered building inspector mistakenly thought structure was in industrial zoning district).

IV. Conclusion.

Petitioner respectfully requests the City to issue a determination that Lot 23 and 23A (or 23 and 2300) are one lot, that they have not been subdivided in accordance with the Raleigh UDO, and that a recombination cannot create two lots from one, and therefore Petitioner request that the City enjoin any transfer, conveyance, sale or development of the Property as two lots pursuant to N.C.G.S §160A-375.

**PETITIONER:**

Joyce G. Parker, Trustee of the Joyce G. Parker Trust

A handwritten signature in cursive script, reading "Joyce G. Parker", is written over a horizontal line.

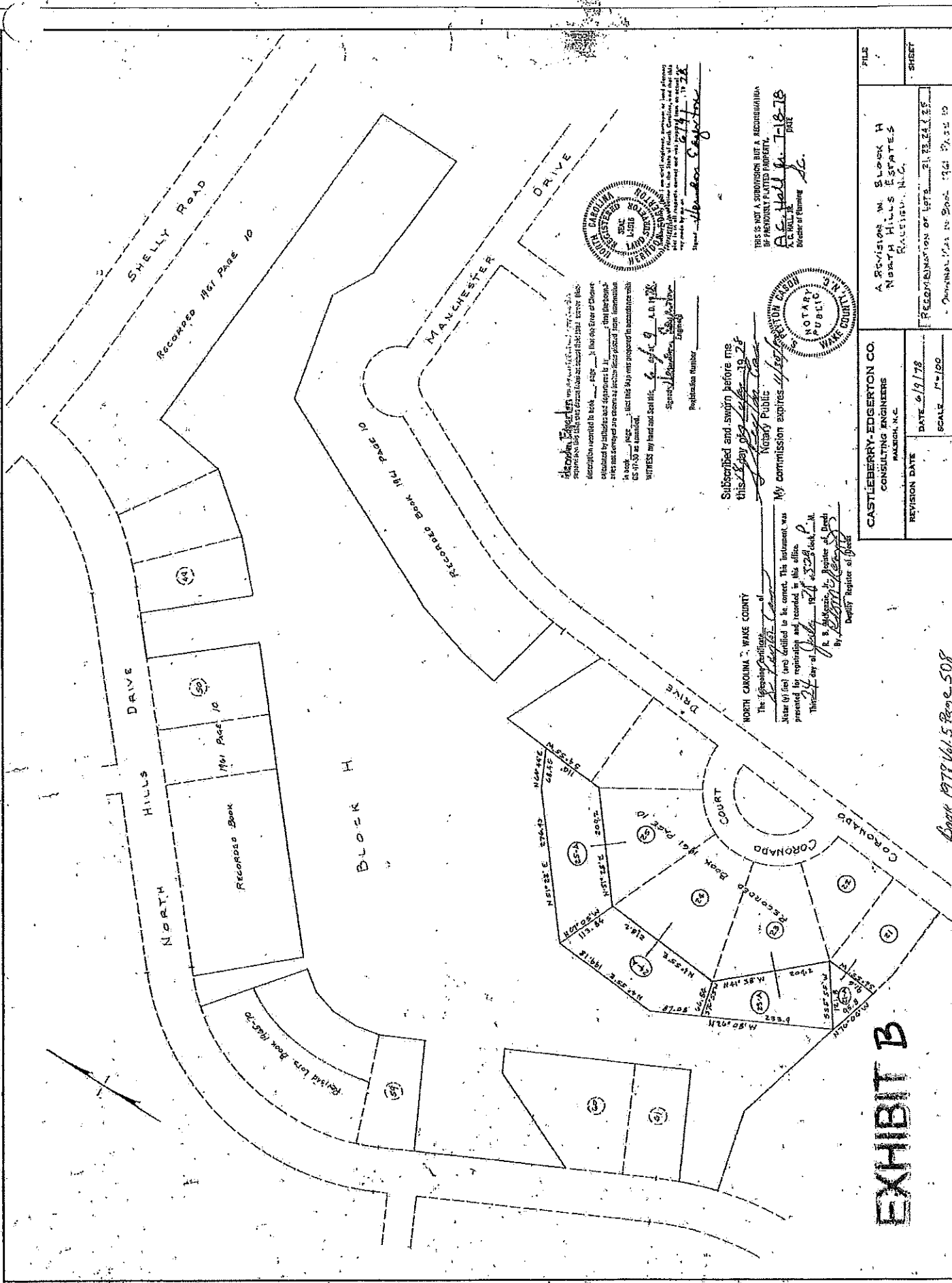
Please copy all correspondence to Petitioner to:

Tara M. Corn  
Pinna, Johnston & Burwell, P.A.  
P.O. Box 31788  
Raleigh, NC 27622  
(919) 755-1317  
tcorn@pjb-law.com









Witness my hand and seal this 6th day of April, 1978, at Raleigh, North Carolina.



Signature of Notary Public  
W. H. Hester  
Notary Public  
Wake County, North Carolina

Subscribed and sworn before me this 6th day of April, 1978.

Notary Public  
My commission expires 4/10/1980



THIS IS NOT A SUBDIVISION BUT A REDEVELOPMENT OF PREVIOUSLY PLATTED PROPERTY.  
A.C. Hall Jr. 7-18-78  
Director of Planning

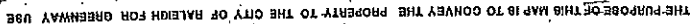
EXHIBIT B

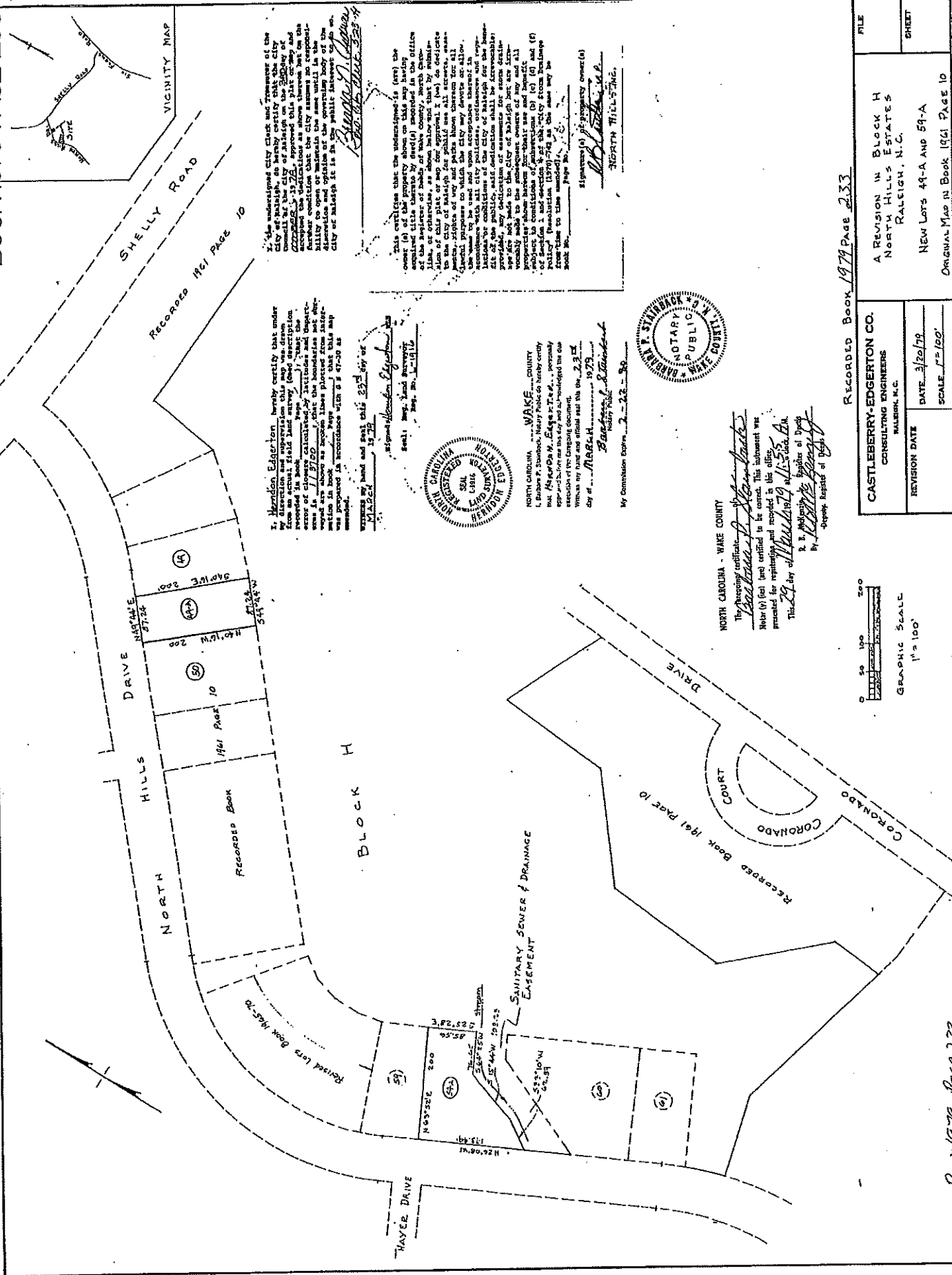
FILE	A REVISION, N. BLOCK H NORTH HILLS ESTATES RALEIGH, N.C.
SHEET	RECORDATION OF MAPS 1978-241-25
DATE	6/9/78
SCALE	1"=100'

CASTLEBERRY-EDGERTON CO.  
CONSULTING ENGINEERS  
MALEIGH, N.C.

REVISION DATE: 6/9/78  
SCALE: 1"=100'

Book 1978 Vol. 5 Page 508









*City of Raleigh*  
*North Carolina*

September 6, 2016

Re: 5201 Coronado Drive Property Identification Number: 1706133704

Dear Property Owner,

Based on a letter dated May 5, 2016, the City of Raleigh's Development Services Department has thoroughly examined the status of the property you own in this location in regard to the number of lots present. The purpose of this courtesy letter is simply to notify you that you own one legal parcel. While your deed of record as referenced by the Wake County Revenue Department for tax purposes describes the land you own as lots 21 & 21A, our office has determined that those two lots were actually recombined into one lot in 1978 as referenced on a map recorded with the Wake County Register of Deeds in Book of Maps 1978, page 508.

Should you or a subsequent owner of your lot wish to create an additional lot(s), then per the Raleigh Unified Development Ordinance Section 10.2.5, a preliminary subdivision plan approval meeting all standards of the Unified Development Ordinance will be required.

No action or notice is required on your part. Please save this letter for future reference. If I may further assist you please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Stacy Barbour", is positioned above the typed name.

Stacy Barbour  
Development Review Manager,  
Raleigh Development Services Department

EXHIBIT E



# EXHIBIT G

127 W. Hargett St., Ste 500 • Raleigh, NC 27601  
T: 919-747-8611 • F: 888-848-9605  
E: andy@peteschlaw.com

## VIA EMAIL

May 5, 2016

Mr. Stacy Barbour  
Senior Planner  
Development Services  
City of Raleigh  
Stacy.Barbour@raleighnc.gov

Mr. Travis Crane  
Assistant Director  
Planning & Zoning  
City of Raleigh  
Travis.Crane@raleighnc.gov

Re: Coronado Drive – Lots 23 and 2300

Dear Mr. Barbour and Mr. Crane:

Tom Worth and I represent Mr. Tom Parker, who resides with his wife at 5205 Coronado Drive ("Parker Property"). An adjacent lot located to the immediate west of the Parker Property was recently recombined and recorded as lots 23 and 2300. (See Exhibit A, "2015 Recombination Plat"). Mr. Parker's position, as explained below, is that (1) the City mistakenly approved the 2015 Recombination Plat, which should have been processed as a subdivision and (2) the adjacent property cannot lawfully be subdivided as drawn on the 2015 Recombination Plat.

### I. The 2015 Recombination Plat Was Approved by Mistake.

The parcel at issue was originally created as Lot 23, Block H in the North Hills Estates subdivision recorded in 1961 (See Exhibit B, "1961 Subdivision Plat" at Book of Maps 1961, Page 10). That lot backed up to a large area of open space. In 1978, a recombination plat – approved by the City of Raleigh Planning Director – for Block H of the North Hills Estates subdivision was recorded. (See Exhibit C, "1978 Recombination Plat" at Book of Maps 1978, Page 508). The following statement appears directly above the Planning Director's signature on the 1978 Recombination Plat: "This is not a subdivision but a recombination of previously platted property."

The 1978 Recombination Plat clearly shows that certain portions of the open space were recombined with four Block H lots, including Lot 23.<sup>1</sup> In fact, the specific portion of open space

---

<sup>1</sup> Maps currently shows the other three 1978 Recombination Plat lots as single lots (21 & 21A, 24 & 24A, and 25 & 25A).

recombined with Lot 23 is (1) drawn showing metes and bounds, (2) labeled as Lot 23-A, and (3) connected to Lot 23 via a line.

As further evidence that the 1978 plat constitutes a recombination of open space and Lot 23 (and not a new lot 23-A), a map recorded in 1988 for purposes of making a greenway dedication plainly depicts only one parcel – Lot 23 – and no Lot 23-A. (See Exhibit D, "1988 Greenway Plat" at Book of Maps 1988, Page 533). The 1978 Recombination Plat is specifically listed as a reference in preparing the 1988 plat. In addition, a subdivision was recorded in 1979 (BM1979, P233) that actually created new lots (49-A and 59-A). Those new lots are shown on the 1988 Greenway Plat while none of the 1978 "new lots" are.

The Wake County records cited above establish conclusively that the effect of the approved and recorded 1978 Recombination Plat was to recombine a certain area of open space (identified on that plat as Lot 23A) with the existing Lot 23, which resulted in a single, larger Lot 23. Therefore, the 2015 Recombination Plat was approved in error and should be revoked.<sup>2</sup>

II. A Proposed Subdivision Creating Two Parcels as Depicted on the 2015 Recombination Plat Must Be Denied.

The lots proposed in the 2015 Recombination Plat cannot be approved as a subdivision. A division of a tract in single ownership into three or fewer lots is only exempt from subdivision regulation if the "resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations." N.C.G.S. § 160A-376. Pursuant to the applicable subdivision regulations in Raleigh, lots must conform with the lot width requirements set out in UDO Chapter 2. See UDO § 8.3.3.D.1. In the R-4 zoning district, conventional detached house development requires a minimum interior lot width of 65 feet. Neither of the lots drawn on the 2015 plat meets this standard and, therefore, cannot be approved as a subdivision.

The subdivision applicant may argue that the proposed lots front a cul-de-sac and, therefore, must only meet the lot width requirements as set out in UDO § 1.5.E. However, the off-shooting loop on Coronado Drive does not meet the definition of a cul-de-sac and that section does not apply to the proposed lots. That conclusion is based on the following analysis of the UDO, the American Planning Association dictionary, Black's Law Dictionary, multiple English language dictionaries, and North Carolina case law.

The UDO expressly states that "[a]ll words and terms used have their commonly accepted and ordinary meaning unless they are specifically defined in this UDO or the context in which they are used clearly indicates to the contrary. UDO § 12.1.1.A. The term "cul-de-sac" is not defined in the UDO. A review of various dictionaries makes clear that a crucial component of a cul-de-sac is that it is closed at one end:

---

<sup>2</sup> North Carolina law is clear that a property owner cannot establish a vested right to develop properties for which a permit or approval was issued in error or by mistake. See Wilson v. City of Mebane, 710 S.E.2d 403 (2011) (staff mistakenly applied provision in old ordinance); Mecklenberg County v. Westberry, 32 NC App. 630, 233 S.E.2d 658 (1977) (permit revoked after County discovered building inspector mistakenly thought structure was in industrial zoning district). A property owner's recourse is to address the matter with the title insurer.



Merriam-Webster Dictionary

<http://www.merriam-webster.com/dictionary/cul-de-sac>

1. a blind diverticulum or pouch
2. **a street or passage closed at one end**
3. blind alley

The Oxford Dictionaries

<http://www.oxforddictionaries.com/definition/english/cul-de-sac>

1. **A street or passage closed at one end**
  2. A route or course leading nowhere
- Synonyms: **no through road**, blind alley, dead end

The Collins English Dictionary

<http://www.collinsdictionary.com/dictionary/english/cul-de-sac>

1. **a road with one end blocked off; dead end**
2. an inescapable position
3. any tube-shaped bodily cavity or pouch closed at one end, such as the caecum

The Cambridge Dictionaries Online

<http://dictionary.cambridge.org/us/dictionary/english/cul-de-sac>

1. **a street that is closed at one end**
2. **a short road that is blocked off at one end**
3. a situation that leads nowhere

This State's Supreme Court has acknowledged this same definition. See State Highway Commission v. Batts, 265 N.C. 346, 144 S.E.2d 126 (1966) (citing Black's Law Dictionary, 4th ed., p. 453 and Ballentine's Law Dictionary, 2d ed., p. 317 for the following: a "cul de sac is defined as a way, street or alley open at one end only"). The Planner's Dictionary provides the following definitions in accord:

**street, cul-de-sac (See also turning circle)**

- A street with a single common ingress and egress and with a turnaround at the end. (*Henderson, Nev.*)
- A local street having one end open to vehicular traffic and the other end permanently closed with a vehicular turn-around. (*Tallmadge, Ohio*)
- A local street of relatively short length with one end open to traffic and the other end permanently terminating in a vehicular turnaround. (*Trenton Township, Ohio*)
- A dead-end street providing at the closed end special enlarged turning and maneuvering space for vehicular traffic as specified in the engineering regulations. (*Golden, Colo.*)

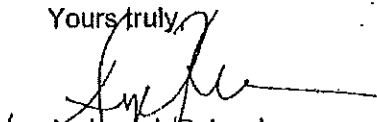
- A street having one open end and being permanently terminated by a vehicle turnaround. (*Mishawaka, Ind.*)

A Planner's Dictionary, American Planning Association, p. 392 (2004). The plain language of all these definitions is very straight forward – streets that have more than one open end are not cul-de-sacs. It is equally clear-cut that the portion of Coronado Drive on which the 2015 Recombination Plat lots front has two access points and cannot qualify as a cul-de-sac by that term's "commonly accepted and ordinary meaning." See UDO § 12.1.1.A.

Moreover, the context in which the term cul-de-sac is used in the UDO is not contrary its commonly accepted and ordinary meaning as described above. The UDO clearly contemplated a bulb at the closed end of the cul-de-sac with a tight arc and small diameter, which would make compliance with the UDO's general lot width requirements impracticable. However, the broad and long arc along Coronado Drive allows for all four lots as originally created in the 1961 Subdivision Plat to meet the UDO's applicable minimum lot width requirement of 65 feet (as indicated via the City's IMaps measurement tool).

Mr. Parker respectfully requests that the City (1) void the 2015 Recombination Plat and (2) issue a written determination that the portion of Coronado Drive that the 2015 Recombination Plat parcels front is not a cul-de-sac and does not qualify for the alternate lot width minimum allowed in UDO § 1.5.E.

Yours truly,



Andrew J. Petesch

[enclosures]

cc:	Mr. Ken Bowers	(via Email)
	Mr. Tom Parker	(via US Mail)
	Mr. Tom Worth	(via Hand Delivery)







[illegible]



It is improper to contact any member of the Board of Adjustment prior to the disposition of a case to discuss the request. An application will not be considered complete until all required submittal components listed on the Appeal of Decision Checklist have been received and approved.

<b>APPEAL OF ADMINISTRATIVE DECISION CHECKLIST</b> (to be completed by applicant)		
	YES	N/A
<b>PRE-SUBMITTAL REQUIREMENTS</b>		
1. A Notice of Appeal shall be submitted to the City Clerk prior to submittal of an Appeal application	<input type="checkbox"/>	<input type="checkbox"/>
2. Appeal of Administrative Decision applications shall be submitted to the Zoning Division, 4 <sup>th</sup> floor of One Exchange Plaza	<input type="checkbox"/>	<input type="checkbox"/>
3. Completed Appeal of Administrative Decision Intake Requirements sheet	<input type="checkbox"/>	<input type="checkbox"/>
<b>APPEAL OF ADMINISTRATIVE DECISION REQUIREMENTS</b>		
1. A signed, notarized application and submittal fee are required.	<input type="checkbox"/>	<input type="checkbox"/>
2. If the appeal involves a specific property, the applicant must submit stamped envelopes addressed to the property owners within 100 feet of the subject property. City staff will mail the public hearing notices.	<input type="checkbox"/>	<input type="checkbox"/>
3. The Board of Adjustment conducts a quasi-judicial hearing. You may not contact the Board members once the application has been filed.	<input type="checkbox"/>	<input type="checkbox"/>
4. If the appeal involves a specific property, City Staff will place a public hearing sign on the subject property. The sign must be prominently displayed on the property for at least ten days before the hearing. The property owner is responsible for maintaining the sign during this ten day period. The owner must return the sign to city staff within three days of the hearing. The owner will be charged \$45 for any sign not returned.	<input type="checkbox"/>	<input type="checkbox"/>
5. If the appeal involves an interpretation made by the City, a copy of the written interpretation shall be included.	<input type="checkbox"/>	<input type="checkbox"/>
<b>APPEAL OF ADMINISTRATIVE DECISION CONSIDERATIONS</b>		
The Board of Adjustment will review the showings and regulations that were applicable to the original decision.	<input type="checkbox"/>	<input type="checkbox"/>

<b>APPEAL OF ADMINISTRATIVE DECISION INTAKE REQUIREMENTS</b> (to be completed by applicant)					
GENERAL REQUIREMENTS	YES	N/A	TO BE COMPLETED BY CITY STAFF		
			YES	NO	N/A
1. I have referenced the Appeal of Administrative Decision Checklist and by using this as a guide, it will ensure that I receive a complete and thorough first review by the City of Raleigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
2. Appeal of Administrative Decision application review fee (see Development Fee Schedule for rate)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
3. Completed, notarized application	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
4. One set of stamped envelopes addressed to all property owners within 100 feet of the subject property (if appeal is related to specific property)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
5. List of all adjacent property owners	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
6. Twelve copies of site plan or plot plan subject to the appeal	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Ten days prior to submitting an application to appeal an administrative decision, a notice to appeal must be submitted to the City Clerk and copied to the administrative officer who rendered the original decision.

1706132824  
MANGRUM BUILDING LLC  
412 E WILLIAMS ST STE A  
APEX NC 27502-2186

1706131503  
RALEIGH CITY OF  
PO BOX 590  
RALEIGH NC 27602-0590

1706133704  
LEWIS, GEOFFREY F and LEWIS, ERIN  
5201 CORONADO DR  
RALEIGH NC 27609-5124

1706140682  
RALEIGH CITY OF  
PO BOX590  
RALEIGH NC 27602-0590

1706038829  
LIVINGSTON, JACOB I and LIVINGSTON,  
KATHERINE B  
5204 N HILLS DR  
RALEIGH NC 27612-5905

1706131972  
MANGRUM BUILDING LLC  
412 E WILLIAMS ST STE A  
APEX NC 27502-2186

1706133863  
PARKER, JOYCE G TRUSTEE of the JOYCE G  
PARKER TRUST  
5205 CORONADO DR  
RALEIGH NC 27609-5124

1706141065  
OTWELL, DWIGHT WOODARD and OTWELL,  
KAREN RENEE  
5215 CORONADO DR  
RALEIGH NC 27609-5124

1706039720  
EDGERTON, DANIEL SEXTON and EDGERTON,  
JANET G  
5108 N HILLS DR  
RALEIGH NC 27612-4010

1706133643  
GARVEY, LOUISA H and GARVEY, JAMES P  
5113 CORONADO DR  
RALEIGH NC 27609-5122

1706135866  
CORN, BRUCE BEASLEY CORN, TARA  
MALONEY  
5204 CORONADO DR  
RALEIGH NC 27609-5125

1706142168  
REVOCABLE LIVING TRUST OF JEFFREY  
HOLLEBRANDT  
5219 CORONADO DR  
RALEIGH NC 27609-5124